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SUPREME COURT. U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1967

No. 39

HANK AVERY, PETITIONER,

vs.

MIDLAND COUNTY, TEXAS, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

PETITION FOR CERTIORARI FILED JANUARY 10, 1967
CERTIORARI GRANTED JUNE 12, 1967

SUPREME COURT OF THE UNITED STATES

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IN THE DISTRICT COURT
OF MIDLAND COUNTY, TEXAS,
142ND JUDICIAL DISTRICT

No. 18,018

HANK AVERY, Plaintiff,

vs.

EDWARD N. GIDEON, et al., Defendants.

PLAINTIFF'S SIXTH AMENDED ORIGINAL PETITION—
Filed April 30, 1964

To the Said Honorable Court:

Now comes Hank Avery, hereinafter styled Plaintiff, complaining of the Commissioners' Court of Midland County, Texas, a body politic, comprised of Edward N. Gideon, Commissioner of Precinct No. 1, Alvery A. Bryant, Commissioner of Precinct No. 2, Clark Moreland, Commissioner of Precinct No. 3, Louis Osborne, Commissioner of Precinct No. 4, and Barbara G. Culver, County Judge, and of Midland County, Texas, one of the counties of the State of Texas and a body corporate and politic, hereinafter styled Defendants, and for cause of action respectfully shows unto the Court the following:

1.

Plaintiff is a resident of the City of Midland, County Commissioners' Precinct No. 1, Midland County, Texas. He owns real and personal property in and is a taxpayer and qualified voter of such City, Precinct, County and State. Plaintiff brings this suit individually and on behalf of other persons similarly situated and qualified, they be-

ing so numerous as to make it impracticable to bring them all before this Court. Defendants Edward N. Gideon, Alvery A. Bryant, Clark Moreland, and Louis Osborne are, respectively, the duly elected and acting County Com- [fol. 322] missioners of County Commissioners' Precincts No. 1, No. 2, No. 3, and No. 4 of Midland County, Texas, and Defendant Barbara G. Culver is the duly elected and acting County Judge of Midland County, Texas. All of said Defendants are residents of Midland County, Texas. This suit is brought against each of said Defendants individually and as members constituting the Commissioners' Court and governing body of Midland County, Texas.

2.

Midland County was created by and organized under the provisions of Chapter 23, Acts of the Nineteenth Legislature of the State of Texas, Regular Session, 1885. The four County Commissioners' Precincts of said County were first established by the Commissioners' Court of said County by an Order passed and approved on February 9, 1886. The boundaries of Commissioners' Precincts No. 1 and No. 4 were thereafter changed by Order of the Commissioners' Court passed and approved on August 12, 1897. By Order of the Commissioners' Court passed and approved on February 16, 1898, the boundaries of all Commissioners' Precincts were reestablished and defined, the effect of such Order being to change the boundaries of Commissioners' Precincts No. 1, No. 3 and No. 4. The boundaries of Commissioners' Precincts No. 3 and No. 4, as established in the Order of 1898, were thereafter changed by Order of the Commissioners' Court passed and approved on July 1, 1908. The boundaries of said Commissioners' Precincts were not again changed until January 1, 1964, the effective date for a change in boundaries provided for in an Order of the Commissioners' Court passed and approved on August 31, 1963.

3.

At the time of its creation and organization and at the time of said Orders of 1897, 1898, and 1908, Midland [fol. 323] County was predominantly a rural area, consisting of ranch and waste land, and was sparsely populated, having a population ranging from approximately 1,000 people in 1885 to approximately 3,500 people in 1908. The City of Midland was first incorporated in 1901. Its corporate existence was abolished in 1911 and later in the same year it was again incorporated and it was then and has been at all times since the only incorporated city, town, or village in Midland County, Texas. From the date of such incorporation until 1949, the City of Midland was situated entirely within the boundaries of County Commissioner's Precinct No. 1 of Midland County, Texas. In such year, by annexing a narrow strip of land to the southwest, the City extended its boundaries into Commissioner's Precinct No. 4 for the purpose of annexing the City of Midland Air Terminal. However, at the time of such annexation and at all times since, all of that part of the City of Midland lying outside the boundaries of Commissioner's Precinct No. 1 has been devoted primarily to public and commercial use and has had a population of less than 300 people.

4.

During the first half of this Century, the predominant growth in population of Midland County occurred in County Commissioner's Precinct No. 1 and, more specifically, within the corporate limits of the City of Midland, as shown by the following Federal Decennial Census figures for the respective years indicated:

POPULATION

Year	County of Midland	City of Midland
1910	3,464	2,192 (63%)
1920	2,449	1,795 (73%)
1930	8,005	5,484 (69%)
1940	11,721	9,352 (80%)
1950	25,785	21,713 (84%)